Kho Ah Soon v Ooi Kar Seng (Properties) Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P–02–56 OF 1994
SHAIK DAUD, SITI NORMA YAAKOB AND VC GEORGE JJCA
2 AUGUST 1995

Civil Procedure *— Injunction — Ex parte interlocutory injunction to restrain dealings in land — Unexecuted sale and purchase agreement — Salient terms agreed by parties — Buyer deposited 10% of purchase price with his solicitor — Vendor refused to complete sale — Evidence that vendor negotiating sale with other party — Buyer claimed specific performance — Injunction sought to maintain status quo — Whether serious triable issues existed — Whether financial status of buyer relevant*

Land Law *— Restraints on dealings — Caveat — Unexecuted sale and purchase agreement — Terms agreed by parties — Buyer claimed specific performance — Whether buyer had caveatable interest — Whether could enter caveat to protect interest pending trial*

Under a sale and purchase agreement ('the agreement'), the respondent agreed to sell and the appellant agreed to purchase 860 acres of land ('the property'), at the purchase price of RM45,000 per acre. All the salient terms of the agreement had been reached by the parties in a meeting on 26 February 1994, and they were subsequently confirmed by the respondent by way of their solicitor's letter dated 4 March 1994. However, there was a disagreement between the parties regarding the date the agreement should carry, ie the appellant preferred the agreement to be dated 15 March 1994, while the respondent wanted it to be dated 9 March 1994. Due to the disagreement, the respondent informed the appellant that they did not wish to proceed with the sale. Despite this, the appellant's solicitors forwarded a draft agreement containing all the terms that had already been agreed upon to the respondent's solicitors on 19 March 1994. In anticipation of its execution, the appellant had also deposited 10% of the purchase price with his solicitors for onward transmission to the respondent's solicitors. However, the respondent reiterated that it did not wish to proceed with the sale, and the agreement remained unexecuted. The appellant argued that the agreement had already been concluded despite the fact that it had not been formally executed, and claimed for specific performance in the High Court. The appellant further applied for: (i) extension of the caveats that he had lodged earlier to protect his interests over the property; and (ii) an ex parte interlocutory injunction to maintain the status quo pending trial. On the other hand, the respondent also made applications to the High Court to remove the caveats, and to set aside the ex parte injunction. In the certificate of urgency filed by the respondent, it was stated that the presence of the caveats was jeopardizing the negotiations between the respondent and other potential buyers of the same property. The trial judge concluded that

there were serious triable issues as to whether a concluded agreement binding the parties existed. However, he allowed the respondent's application to remove the caveats and set aside the injunction on the ground that the balance of convenience lay in favour of the respondent as: (i) there was no evidence to suggest that the respondent intended to sell the property to third parties; and (ii) the appellant did not appear financially able to pay the balance of the purchase price. Dissatisfied, the appellant has appealed to the Court of Appeal. The respondent has cross-appealed to set aside the trial judge's finding that there were serious questions to be tried.

Held, allowing the appellant's appeal and dismissing the respondent's cross-appeal:

(1) (Per **Shaik Daud JCA**) The trial judge had rightly held that there were serious issues to be tried as to whether a concluded agreement existed. However, the trial judge was wrong in not allowing the appellant to maintain the caveat and the injunction. Land being a valuable and special commodity, once lost, might not adequately be compensated by damages, and there was clear evidence in this case that the respondent was carrying out negotiations with potential buyers to dispose of the property. It followed that the balance of convenience and justice was in favour of maintaining the status quo.

(2) (Per **Shaik Daud JCA**) Questions of financial ability should not affect the essential justice of a case and plaintiffs who are poor should not be denied caveats and injunctions. Thus, the trial judge should not have deprived the appellant of a specific performance of the agreement on the ground that the appellant was not financially able to conclude the sale in view of the purchase price which was over RM30m. The fact that the appellant had averred that he was at all material times ready and willing to conclude the sale was good enough.

(3) (Per **Siti Norma Yaakob JCA**) Although the respondent maintained that there was no concluded agreement with the appellant, the respondent had acted contrary to that contention. This was evidenced by its letter of confirmation dated 4 March 1994 which referred to a draft agreement to be prepared by the appellant's solicitors at the request of the respondent. Further, it seemed that the reason why the respondent backed out of the agreement was not that the terms had not been agreed upon, but that there was no consensus as to the date that the agreement should carry.

(4) (Per **Siti Norma Yaakob JCA**) There was also ample evidence in the respondent's certificate of urgency to show that the respondent was negotiating the sale of the property with some other party.

(5) As long as the appellant had averred that he was ready and willing to purchase the lands, it was not for the court to question

where he was going to obtain the funds to meet his financial obligations. The present proceedings were only concerned with the protection of the subject matter of the dispute and maintaining the status quo.

[Bahasa Malaysia summary

Di bawah suatu perjanjian jual beli ('perjanjian tersebut'), penentang bersetuju untuk menjual dan perayu bersetuju untuk membeli 860 ekar tanah ('hartanah itu'), pada harga belian RM45,000 seekar. Kesemua terma penting perjanjian itu telah dicapai oleh pihak-pihak yang berkenaan dalam suatu mesyuarat pada 26 Februari 1994, dan terma-terma tersebut telah kemudiannya disahkan oleh penentang melalui surat peguamcara mereka bertarikh 4 Mac 1994. Walau bagaimanapun, terdapat suatu percanggahan di antara pihak-pihak tersebut mengenai tarikh yang harus dicatatkan di dalam perjanjian itu, iaitu perayu mengkehendaki ia ditarikhkan 15 Mac 1994, sementara penentang mengkehendaki ia ditarikhkan 9 Mac 1994. Akibat percanggahan ini, penentang telah memaklumkan kepada perayu bahawa ia tidak ingin meneruskan jualan tersebut. Walau bagaimanapun, peguamcara perayu masih mengemukakan suatu draf perjanjian yang mengandungi kesemua terma yang telahpun dipersetujui kepada peguamcara penentang pada 19 Mac 1994. Menjangka bahawa perjanjian itu akan dilaksanakan, perayu telah mendepositkan 10% daripada harga jualan dengan peguamcaranya untuk dihantarkan kepada peguamcara penentang. Bagaimanapun, penentang kemudiannya mengulang bahawa ia tidak ingin meneruskan jualan itu, dan perjanjian itu tetap tidak dilaksanakan. Perayu menghujahkan bahawa perjanjian itu telahpun diikat walaupun ia tidak disempurnakan secara rasmi, dan menuntut untuk pelaksanaan spesifik di Mahkamah Tinggi. Perayu juga telah memohon untuk: (i) perlanjutan tempoh kaveat yang dimasukkannya terlebih awal untuk melindungi kepentingannya atas hartanah itu; dan (ii) suatu injunksi interlokutori ex parte untuk mengekalkan status quo sementara menunggu perbicaraan. Sebaliknya, penentang juga telah membuat permohonan kepada Mahkamah Tinggi untuk membatalkan kaveat itu dan mengenepikan injunksi ex parte itu. Di dalam perakuan kesegeraan yang difailkan oleh penentang, telah dinyatakan bahawa kehadiran kaveat itu membantutkan perundingan di antara penentang dan bakal pembeli hartanah yang sama. Hakim perbicaraan memutuskan bahawa terdapat isu serius untuk dibicarakan sama ada suatu perjanjian yang telah diselesaikan yang mengikat pihak-pihak yang berkenaan wujud. Tetapi, beliau membenarkan permohonan penentang atas alasan bahawa imbangan kemudahan memihak kepada penentang oleh kerana: (i) tidak terdapat keterangan yang mencadangkan bahawa penentang berniat untuk menjual hartanah itu kepada pihak ketiga; dan (ii) perayu mungkin tidak mampu dari segi kewangan untuk membayar baki harga belian. Perayu tidak berpuas hati lalu membuat rayuan kepada Mahkamah Rayuan.

Penentang telah membuat rayuan balas untuk mengenepikan keputusan hakim perbicaraan bahawa terdapat soalan serius yang harus dibicarakan. A

Diputuskan, membenarkan rayuan perayu dan menolak rayuan balas penentang: B

(1) (Oleh **Shaik Daud HMR**) Hakim perbicaraan telah dengan betulnya memutuskan bahawa terdapat isu serius untuk dibicarakan sama ada suatu perjanjian yang mengikat wujud atau tidak. Walau bagaimanapun, hakim perbicaraan telah membuat kesilapan kerana tidak membenarkan perayu untuk mengekalkan kaveat dan injunksi itu. Tanah sebagai komoditi yang berharga dan istimewa, sekali hilang, mungkin tidak dapat digantikan dengan secukupnya dengan ganti rugi, dan terdapat keterangan yang jelas di dalam kes ini bahawa penentang sedang menjalankan perundingan dengan bakal pembeli untuk menjualkan hartanah itu. Ekoran itu, imbangan kemudahan dan keadilan memihak kepada mengekalkan status quo. C D

(2) (Oleh **Shaik Daud HMR**) Soalan kemampuan dari segi kewangan tidak harus mempengaruhi keadilan asas sesuatu kes, dan plaintif yang miskin tidak harus dinafikan kaveat dan injunksi. Oleh itu, hakim perbicaraan tidak harus menyebabkan perayu kehilangan pelaksanaan spesifik perjanjian tersebut atas alasan bahawa perayu tidak mampu dari segi kewangan untuk menyelesaikan perjanjian itu memandangkan harga jualan adalah lebih daripada RM30 juta. Kenyataan bahawa perayu telah menyatakan bahawa beliau adalah pada kesemua masa yang material sedia dan sanggup untuk menyelesaikan jualan tersebut adalah memadai. E F

(3) (Oleh **Siti Norma Yaakob HMR**) Walaupun penentang menyatakan bahawa tidak terdapat perjanjian yang mengikat dengan perayu, penentang sesungguhnya telah bertindak sebaliknya. Ini dibuktikan oleh surat pengesahannya bertarikh 4 Mac 1994 yang merujuk kepada draf perjanjian yang akan disediakan oleh peguamcara perayu atas permintaan penentang. Seterusnya, nampaknya sebab mengapa penentang menarik diri daripada perjanjian tersebut bukan kerana terma perjanjian tidak dapat dipersetujui, tetapi kerana tidak terdapat persetujuan tentang tarikh yang akan dinyatakan di atas perjanjian itu. G H

(4) (Oleh **Siti Norma Yaakob HMR**) Juga terdapat keterangan yang lebih daripada mencukupi di dalam perakuan kesegeraan penentang yang menunjukkan bahawa penentang sedang mengadakan perundingan mengenai jualan hartanah itu dengan pihak yang lain. I

(5) Asalkan perayu telah mengatakan bahawa beliau bersedia dan sanggup membeli hartanah itu, mahkamah tidak seharusnya menyoal dari mana perayu akan mendapatkan sumber wangnya

untuk memenuhi kewajipan kewangannya. Prosiding ini hanya berkenaan dengan perlindungan hal perkara pertelingkahan dan pengekalan status quo.]

Notes

For cases on ex parte interim injunctions, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1467–1468.

For cases on caveats, see 8 *Mallal's Digest* (4th Ed) paras 1687–1775, 1837–1845; [1989] Mallal's Digest 1084–1090; [1990] Mallal's Digest 837–845, 896; [1991] Mallal's Digest 1318–1328; [1992] Mallal's Digest 1187–1206; [1993] Mallal's Digest 967–984; [1994] Mallal's Digest 1621–1647.

Cases referred to

Allen v Jambo Holdings Ltd & Ors [1980] 2 All ER 502; [1980] 1 WLR 1252 (folld)

Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (folld)

Appeal from: Civil Suit No 22–193–94 (High Court, Kuala Lumpur)

Mureli Navaratnam (*Ghazi & Lim*) for the appellant.
K Balasundaram (*Balasundaram & Co*) for the respondents.

Cur Adv Vult

Shaik Daud JCA: This is an appeal for the restoration of an injunction and caveat which were ordered to be removed by the Penang High Court on 2 August 1994, pending trial of a claim for specific performance.

On 27 June 1994, the appellant had filed a suit against the respondent company based on a written agreement entered between them on 26 February 1994. It was alleged in the said agreement that the respondent had agreed to sell and the appellant had agreed to buy some lands. The appellant also seeks an order for specific performance and continuance of a caveat he had earlier entered upon the land in question as well as for an injunction, damages and costs.

Earlier on the same day the writ was caused to be issued, on an application by the appellant ex parte, the learned judge had given an interim injunction restraining the respondent from transferring and dealing in the land in question and at the same time ordered the extension of the caveat earlier obtained until further notice.

On 4 July 1994, the respondent filed a summons-in-chambers to set aside the interim injunction and the extension of the caveat. On 6 July 1994, the appellant filed a summons-in-chambers for an interim injunction this time inter partes. The learned judge heard both applications at the same time on 2 August 1994, and allowed the application by the respondent and ordered the ex parte interim injunction earlier given to be discharged and also ordered the removal of the caveat. Hence, this appeal. The

respondent has on the other hand filed a cross-appeal to have a part of the learned judge's finding, viz that there is a serious question to be tried, set aside. A

The salient facts are that by a written agreement made on or about 26 February 1994 (hereafter referred to as 'the agreement') between the appellant and the respondent whereby the respondent had agreed to sell and appellant had agreed to buy all those pieces of land known as Lot Nos 111, 126, 205–206, 308–309, and 422–425 all in Mukim 6, Seberang Perai Selatan, and Lot Nos 114, 157, 201, 826, 1274, 1276–1279, 1297, 1302 and 1348 all in Mukim 7, Seberang Perai Selatan also known as Krian Estate Kedah (hereafter referred to as 'the said property') for RM45,000 per acre. B C

The appellant had earlier exercised an option given to him by the respondent dated 4 November 1993, to purchase the property. As a result of several exchanges of correspondence between the parties from 3 December 1993 to 7 February 1994, a meeting was held at which time the appellant and the respondent agreed to certain terms for the purchase of the said property and pursuant to that the respondent's solicitors wrote a letter dated 4 March 1994 confirming this agreement, and in which they referred to a draft sale and purchase agreement. Suddenly, by a letter dated 8 March 1994, the respondent through their solicitors expressed their desire not to proceed with the sale of the said property to the appellant. After that, there were exchanges of correspondence between both solicitors which ended finally with a letter dated 24 March 1994 from the respondent's solicitor that the respondent was unwilling to proceed with the sale. The appellant was at all material times willing and able to conclude the purchase as earlier agreed. In order to preserve the status quo of the said property, the appellant caused a caveat to be entered on 31 March 1994. The appellant filed this claim against the respondent praying for specific performance, extension of the caveat and an injunction to stop the respondent from disposing of the land. The respondent, on the other hand, contends that no concluded agreement was in fact reached for the sale and purchase of the said property. As for me, I find it hard to accept this in view of the letter from the respondent's own solicitor dated 4 March 1994 which in fact confirmed that an agreement had been reached between the parties. D E F G

At the hearing before the learned judge, he rightly came to the conclusion that what the court was concerned with then was whether there were serious triable issues. After considering the facts he concluded that there were serious triable issues as to whether there was or was not a concluded contract binding on both parties. Then he went on further to say that he should also consider the balance of convenience on whether the status quo ought to be maintained. Here, the learned judge relied on a passage from the celebrated case of *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212, where at p 215, Lord Diplock said: H I

> In the case of a refusal by the vendor to complete a contract for the sale of land the normal remedy of the purchaser as plaintiff in an action is an order

A for specific performance of the contract; and in the absence of special circumstances, if it were shown that the vendor threatened to dispose of the land while the action was still pending, the balance of convenience would be in favour of granting an interlocutory injunction to prevent his doing so, provided that the plaintiff would be in a position to satisfy his undertaking as to damages if the action should fail at trial.

B The learned judge came to the conclusion that there was no evidence at all that the respondent had disposed, was in the process of disposing or had threatened to dispose of the said property. He added further that in view of the price allegedly agreed upon between the parties, ie RM38,227,275, it would not be that easy to get a new buyer at that price.

C On the issue of whether there was any evidence of a threat to dispose of the land, learned counsel for the appellant brought to the attention of the court, a certificate of urgency dated 4 July 1994 accompanying the respondent's application for the removal of the caveat also dated 4 July 1994, which clearly gave the reason of the urgency for the application D ought to be heard urgently that it would 'affect negotiations between the respondents and the would be buyers of the Krian Estate valued at over RM40m'. If this is not evidence of a threat to dispose of the land, I do not know what is. As for myself, I am unable to accept the learned judge's reasoning that in view of the price agreed upon, it would not be easy to get a buyer. In these affluent times, the respondent would most probably be E able to get several buyers, not to speak of a buyer. In any case, as I stated earlier, the evidence contained in the certificate of urgency itself showed that there were ready buyers and negotiations were going on with several of them.

In view of the clear evidence of negotiations with other potential F buyers of the said property, I find that there is sufficient evidence of an impending threat to dispose of the said property which in itself calls for the status quo to be maintained until after the disposal of the case. In the light of this and the fact that the learned judge rightly held that there are serious issues to be tried as to whether a concluded contract existed, the balance of convenience must tilt in favour of the appellant. On this score alone, the G appellant is entitled to maintain the caveat and the injunction.

The learned judge also considered two other issues. First, the learned judge doubted the financial ability of the appellant to conclude the sale in view of the price involved. He also doubted the ability of the appellant to pay damages should he fail in his claim against the respondent. In this H respect, I see no reason why the appellant should be deprived of the benefit of a specific performance of the agreement which he says was concluded. All he is asking is for his claim to be tried, and until then the respondent should not jeopardize the position by disposing of the said property in the meantime. The appellant has averred that he is at all I material times ready and willing to conclude the sale and this is good enough for me. Even plaintiffs who are poor should not be denied caveats and injunctions. Questions of financial ability should not affect the position of the essential justice of a case as between the parties. (See *Allen v Jambo*

Holdings Ltd & Ors [1980] 2 All ER 502.) In that case, it was held that the issue of mareva injunction ought not to be determined solely by a plaintiff's financial standing and in each case the issue of an injunction depended on the balance of justice and convenience. A

Looking at the facts of the present case, it seems clear to me that as the learned judge himself has rightly held that there are serious issues to be tried and as there is clear and unrefuted evidence of actual ongoing negotiations to dispose of the said property to other potential buyers, the balance of convenience and of justice must be in favour of maintaining the status quo. Land being a valuable and special commodity, once lost, may not adequately be compensated by damages. B

For these reasons, I find myself unable to support the decision of the learned judge and therefore would allow the appeal with costs. As pleadings have been closed, I would also order an early trial of the appellant's claim. In the light of the above decision, I find no merits in the respondent's cross-appeal. There are in fact triable issues as was held by the learned judge. Therefore, the respondent's cross-appeal is dismissed with costs. C D

Deposit to be refunded to appellant. The deposit in the cross-appeal is to go to the appellant towards taxed costs.

Siti Norma Yaakob JCA: The only issue raised in this appeal is whether there has been a concluded sale and purchase agreement between the parties in these proceedings as to entitle the appellant/purchaser, who was the plaintiff in the court below, to: E

(1) maintain the two private caveats which he had lodged on 31 March 1994 against two pieces of land, being part of the subject matter of the purchase. He had subsequently on 27 June 1994, obtained an order ex parte extending the duration of the caveats until further order; and F

(2) maintain an injunction which he had obtained ex parte on 27 June 1994, restraining the respondent from dealing with the lands, the subject matter of the purchase, in whatever form. G

On 4 July 1994, the respondent filed a summons-in-chambers to set aside the ex parte order obtained by the appellant on 27 June 1994 extending the duration of the caveats.

On 6 July 1994, the appellant had also filed a separate application to have the ex parte injunction obtained on 27 June 1994 heard inter partes. H

The two applications were heard jointly by Abdul Hamid J on 19 July 1994 and on 2 August 1994, the learned judge whilst acknowledging that there are serious questions to be tried, allowed the respondent's application, removed the two caveats lodged by the appellant and dismissed the appellant's application for the interlocutory injunction on the ground that there is no evidence to suggest that the respondent intended to part with the land to third parties. Hence, the present appeal by the appellant to I

A have the caveats and ex parte injunction restored. There is also a cross-appeal filed by the respondent to have that part of the learned trial judge's finding that there are serious questions to be tried, set aside.

The appellant's claim against the respondent is for the specific performance of a sale and purchase agreement, the terms of which, he B maintained had already been concluded between them, although the agreement was not formalized by its execution. Under the agreement, the respondent agreed to sell and the appellant to purchase 30 parcels of land, totalling 860 acres which forms part of the Kerian Kedah Estate, at the agreed price of RM45,000 per acre. It is not disputed that there had been various meetings and negotiations between them culminating in the meeting C on 26 February 1994 when specific terms as to when payment of the purchase price became due and payable had been reached, so too the question of vacant possession and the position of five squatters on the land in question. These terms were also recorded by the appellant's solicitor, Mr Peter Miranda.

D The fact that these salient terms had been agreed upon was confirmed subsequently by the respondent by way of their solicitor's letter dated 4 March 1994.

Despite such confirmation, there was further correspondence between the parties regarding other terms which however did not touch on the E salient terms already agreed upon on 26 February 1994. One of these other terms was the date the agreement should carry irrespective of when it would in fact be executed. Whilst the appellant preferred the agreement to be dated 15 March 1994, the respondent however wanted it to be dated 9 March 1994, and the upshot of this is that by letters dated 8 March 1994 and 9 March 1994, the respondent informed the appellant that they did F not wish to proceed with the sale.

Despite these two letters, the appellant's solicitors by letter dated 19 March 1994 forwarded a draft agreement containing all the terms that had already been agreed upon to the respondent's solicitors for their comments. In anticipation of its execution, the appellant had also a day G earlier on 18 March 1994 deposited 10% of the purchase price amounting to RM3,822,727.50 to his solicitors for onward transmission to the respondent's solicitors. However, the deposit never reached the respondent as by letter dated 24 March 1994, their solicitors reiterated that the respondent did not wish to proceed with the proposed sale.

H It was under these circumstances that the appellant lodged first, the two caveats on 31 March 1994 to protect his interests over the lands, and secondly, obtained the ex parte injunction to maintain the status quo. Thus the first issue raised is whether the appellant has any caveatable interest to protect and whether the status quo should be maintained. This must hinge on the issue as to whether there has been a concluded agreement I entered into between the parties. The trial judge held that on the affidavit evidence and the contemporaneous documents, there are serious questions to be tried and when considering in whose favour the balance of convenience lies, he took note of the following factors:

(1) that as an individual, the appellant may be hard pressed and may not be financially sound to meet payment of the balance of the purchase price of over RM38m bearing in mind that even the 10% deposit did not come from his own funds but were the funds of third parties; and

(2) there is no evidence to suggest that the respondent intended to part with the lands to other third parties.

The trial judge then made a finding that the balance of convenience lies in favour of the respondent as there are no special circumstances to warrant the caveats and the ex parte injunction to remain.

Whilst I accept the trial judge's finding that there are serious questions to be tried, I however cannot accept the rest of his findings as the respondent, whilst maintaining there was no concluded agreement reached with the appellant, had acted contrary to that contention. This is first evidenced by the issue of the letter dated 4 March 1994, wherein they have intimated their confirmation of the terms recorded on 26 February 1994 in the following manner:

> In view of the fact that your clients and ours had in principle agreed on the terms of the sale and purchase agreement on 26 February 1994, our clients would like the sale and purchase agreement when executed to be dated 1 March 1994 and would appreciate your confirmation.

Then again, when the appellant's solicitors by their letter dated 19 March 1994 submitted the draft sale and purchase agreement to the respondent's solicitors for their comments, there was a clear indication in that letter that the draft agreement was prepared by the appellant's solicitors at the request of the respondent.

Secondly, the contemporaneous documents show that the reason why the respondent backed out of the agreement is not so much that the terms had not been agreed upon but that there was no consensus as to the date that the agreement should carry. Whilst the appellant wanted 15 March 1994, the respondent preferred 9 March 1994.

As for the trial judge's finding that there is no basis for the appellant to fear that the respondent intends to part with the property, here again, there is ample evidence to the contrary. This is found in the respondent's own documents, this being their certificate of urgency filed in separate proceedings to have the caveats removed. In that certificate, they have stated in no uncertain terms that they were negotiating with other buyers for the sale of the same property and that the presence of the caveats was jeopardizing such negotiations. This may well be the true reason why the respondent backed out of the agreement.

Lastly, I come to the trial judge's finding that as an individual, the appellant would be hard pressed to meet his financial obligations under the agreement. In this respect, I consider that finding to be naive as there are many financial institutions in this country that would readily come to the aid of an individual like the appellant. It is true that the 10% deposit did not come from his own private funds but this is not an indication that he would not be able to raise the balance of the purchase price. The fact

A that the cheques of other third parties were utilized to meet the 10% deposit must be considered as part and parcel of the way business is conducted and nothing more. For as long as the appellant has averred that he is ready and willing to purchase the lands, it is not for the court to question just where he is going to source the funds to meet his financial obligations.

B

As the present proceedings are only concerned with the protection of the subject matter of the dispute and maintaining the status quo, and since there is ample affidavit evidence and contemporaneous documentary evidence to support the appellant's contention, the appellant's appeal is allowed with costs, the caveats and injunction are restored and the cross-

C appeal is dismissed with costs. Since the pleadings have already been closed, an early trial of this suit is also ordered and the deposit of the appeal be released to the appellant as well as the deposit of the cross-appeal to account for the appellant's taxed costs.

D

VC George JCA: For the reasons set out in the judgment of my learned brother, Shaik Daud JCA, and my learned sister, Siti Norma Yaakob JCA, I would also make the orders they propose be made in this appeal.

Appeal allowed; cross-appeal dismissed.

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Reported by Isabel Liong

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